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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MONTANA
BILLINGS DIVISION

CHARLES P. MCJUNKIN, deceased, by and through his executrix and personal representative, RHETT MCJUNKIN, and RHETT MCJUNKIN, executrix and personal representative, on behalf of the heirs of CHARLES P. MCJUNKIN, Plaintiffs, vs. JAMES YEAGER d/b/a JIM YEAGER OUTFITTERS, Defendants.	Cause No. CV- **COMPLAINT AND DEMAND FOR JURY TRIAL**

COME NOW the Plaintiffs, by and through their counsel of record, Philip McGrady, and for their complaint against the above-named Defendant, state and allege as follows:

JURISDICTION AND VENUE

1. Charles P. McJunkin (deceased) was the natural father of Rhett McJunkin, and at all times relevant hereto was a resident of the State of Georgia, County of DeKalb.

2. Rhett McJunkin was at all times relevant hereto a resident of the State of South Carolina, County of York.

3. Defendant James Yeager d/b/a Jim Yeager Outfitters is a resident of Stillwater County, Montana.

4. The amount in controversy in this case exceeds the sum of $75,000, exclusive of interest and costs.

5. Accordingly, the Plaintiffs invoke the jurisdiction of this Court, on the principles of diversity jurisdiction, pursuant to 28 U.S.C. § 1332.

6. Venue is appropriate in this division since the negligent act occurred near Columbus, in Stillwater County, Montana.

FACTS COMMON TO ALL COUNTS

7. At all times pertinent hereto, James Yeager d/b/a Jim Yeager Outfitters (hereinafter "Defendant") was engaged in the business of guiding clients on the waters of Montana.

8. On July 17, 2014, Defendant took Charles P. McJunkin on a guided fishing trip on the Stillwater River in Stillwater County, Montana.

9. Charles P. McJunkin was 81 years old at the time.

10. Certain portions of the Stillwater River include potentially hazardous and unsafe conditions, such as one particular stretch of river that is commonly referred to as the "Beartooth Drop," which requires appropriate safety equipment.

11. On July 17, 2014, as Defendant was guiding and operating the boat on the Stillwater River, directly above the Beartooth Drop, Defendant caused the boat to hit a large wave of water, pitching Charles P. McJunkin out of the boat.

12. Charles P. McJunkin was not wearing a personal flotation device when he was thrown from the boat.

13. After trying unsuccessfully to get back into the boat, Charles P. McJunkin went through the Beartooth Drop and disappeared beneath the water.

14. Charles P. McJunkin's body was ultimately located below the Beartooth Drop, and his body had signs of trauma to the head and possible injury to the right shoulder. The force of the water had also removed most of the clothes from Charles P. McJunkin's body.

15. Upon information and belief, Charles P. McJunkin had fallen out of Defendant's boat at least once in the days before his drowning on a different stretch of water.

16. Commercial boatmen and/or raft operators, such as Defendant, should have a heightened sense of awareness as to the dangers and potential hazards of this particular stretch of the Stillwater River, especially when the client is an elderly person such as Charles P. McJunkin.

COUNT ONE
Negligence

Plaintiffs re-allege and incorporate herein by reference the allegations of the preceding paragraphs as set forth in full, and further allege as follows:

17. Defendant had a duty to meet the standards of care and practice requisite in the industry.

18. Defendant had a duty to use reasonable care in providing guide services to Charles P. McJunkin.

19. Defendant had a duty to recognize and identify the dangers and potentially hazardous and/or unsafe conditions of this particular stretch of the Stillwater River for its customers.

20. Defendant had a duty to instruct and oversee its customers such as Charles P. McJunkin when navigating this particular stretch of the Stillwater River.

21. Defendant had a duty to make reasonable determinations as to Charles P. McJunkin's physical ability to withstand the risks of being

subjected to dangerous waters such as the Beartooth Drop, outside of the boat, without a personal flotation device.

22. Defendant had a duty to inform Charles P. McJunkin of the potentially hazardous nature of this particular stretch of the Stillwater River so that Charles P. McJunkin could make informed choices about safety.

23. Defendant had a duty to safely operate and navigate the boat when carrying its customers, such as Charles P. McJunkin.

24. Defendant had a duty to provide a customer such as Charles P. McJunkin with safety equipment that is incidental to or required by floating this particular stretch of the Stillwater River under this particular set of conditions.

25. Defendant had a duty to require a customer such as Charles P. McJunkin to wear a personal flotation device when floating this particular stretch of the Stillwater River.

26. Defendant breached these duties to Plaintiffs.

27. As a result of the negligence of Defendant, Charles P. McJunkin suffered the severe and permanent injuries set forth above, which resulted in his death.

COUNT TWO
Negligent Infliction of Emotional Distress

Plaintiffs re-allege and incorporate herein by reference the allegations of the preceding paragraphs as set forth in full, and further allege as follows:

28. The heirs of Charles P. McJunkin, on their own behalf, have been subjected, by the circumstances of the injuries and death of their father, to serious and severe emotional distress. The acts and/or omissions of Defendant, as described above, constitutes the commission of tort of negligent infliction of emotional distress as that cause of action is now recognized under Montana law. The heirs of Charles P. McJunkin have suffered and continue to suffer serious and severe emotional distress including, but not limited to shame, humiliation, degradation, embarrassment, anger, disappointment and worry, all of which have resulted in further damages and injuries to the heirs of Charles P. McJunkin.

29. As a result of the wrongful acts and/or omissions of the Defendant, as stated above, the heirs of Charles P. McJunkin have suffered and continue to suffer severe emotional distress which was the reasonably foreseeable consequence of said wrongful acts and/or omissions for which Defendant is liable to the heirs of Charles P. McJunkin for all damages available under Montana law.

COUNT THREE
Loss of Consortium

Plaintiffs re-allege and incorporate herein by reference the preceding allegations as though set forth in full, and further allege as follows:

30. Plaintiffs, as a result of the wrongful acts and/or omissions of the Defendant, as stated above, have suffered and will continue to suffer loss of consortium as that claim is defined under Montana law, and are entitled to recover all damages available under Montana law from the Defendant.

WHEREFORE, Plaintiffs pray judgment against Defendant for all damages to which they are entitled to under Montana law in such categories and in such amounts as will be furnished to Defendant in accordance with applicable Montana law and/or the Federal Rules of Civil Procedure, or by amendment, or proof at trial. Plaintiffs leave the precise damages as are just and proper to Plaintiffs' trial jury as that jury judges all facts and circumstances presented.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand trial by jury.

DATED this 26th day of January, 2017.

MCGRADY LAW FIRM

By /s/ Philip McGrady
Philip McGrady
Attorneys for Plaintiffs